

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. FAA 1999-6622; Amendment No. 11-46]

RIN 2120-AG95

General Rulemaking Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is issuing this final rule in response to President Clinton's mandate to Federal agencies to make communications with the public more understandable. The FAA is revising and clarifying its rulemaking procedures by putting them into plain language and by removing redundant and outdated material. Rulemaking procedures are an important way for the public to interact with FAA, and it is important that these procedures be easy to understand and follow.

DATES: Effective September 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald Byrne, Assistant Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone: (202) 267-3073.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBRFA on the Internet at our site, <http://www.gov/avr/arm/sbrefa.htm>. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

The FAA is revising part 11 by eliminating redundant and outdated information that is not necessary to public participation in the rulemaking process. We also are removing supplementary information available on request from FAA, such as internal delegations of authority. This change will help FAA keep its procedures current because we will not have to revise part 11 to update supplementary information not critical to your participation in the rulemaking process.

Because we are eliminating redundant material from subparts A through E, we are folding all its rulemaking procedures into one subpart. This rulemaking consolidates material on different aspects of our regulatory program, clarifying that there is really only one basic process the public must follow to interact with our regulatory program. We have eliminated some provisions that are obsolete. We explain these changes in more detail in the following paragraphs. Finally, we have updated our list of information collection clearance numbers previously designated subpart F, now redesignated subpart B. We did not include new subpart B in the proposal, but we include it here.

General Substantive Changes from the Proposed Amendment of Part 11

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, FAA re-examined the writing style currently used in the development of regulations. The memorandum requires federal agencies to communicate clearly with the public. The proposed revision to part 11 was the FAA's first significant attempt to write rules in plain language. The FAA received numerous favorable comments on the clarity and style of the document. We will continue with this effort to improve the clarity of

FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at <http://www.plainlanguage.gov>.

We hope this new plain language format will help readers find requirements quickly and understand them easily. We reorganized and reworded the regulation using plain-language techniques not usually found in the Federal Register and the Code of Federal Regulations (CFR). We used undesignated center headings to cluster related sections within subpart A. We shortened sections, paragraphs, and sentences, and where possible used simple words to speed up reading and improve understanding. We put our section headings in the form of questions to help direct the readers to specific material they are interested in. We used personal pronouns to reduce passive voice and draw readers into the writing.

Petition for Reconsideration of Final Rules

We have removed any reference in part 11 to petitions for reconsideration of a final rule. The previous rule discussed this procedure only for final rules for the designation of controlled airspace and for airworthiness directives (see old rule §§ 11.73 and 11.93). Actually, under both the previous part 11 and this amendment, you may ask FAA to reconsider any agency final rule by following FAA rulemaking procedures. For example, if FAA issues a final rule accompanied by a request for comments, you may submit arguments why FAA should not have adopted the final rule. If we agree, we may issue another final rule repealing or revising the earlier rule.

In addition, you may file a petition for rulemaking to repeal or revise a final rule we adopted. If we agree with you that we should not have adopted the final rule, we may

issue another final rule repealing or revising it. If you persuade us that the final rule was not reasonable in light of the record, including the comments we received, we may do this by issuing an immediate final rule to correct the problem. If you provide information that we didn't have before, we may need to provide others with an opportunity for others to comment before issuing a revision or repealing the rule.

Petitions for Rulemaking and Exemption

In proposed § 11.63 we provided an address at FAA to send your paper and electronic petitions for rulemaking and exemption. In the final rule, these addresses have been changed to the Department of Transportation's Docket Management System (DMS), U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001 for paper submissions, and the DMS web page at <http://dms.dot.gov/> for electronic submissions. See the section-by-section discussion on § 11.63 that follows for further information. Additionally, the rule no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401.

We removed any reference in this rule to the publication of summaries of petitions for rulemaking for public comment because we do an initial screening when we receive your petition. In circumstances where your petition does not meet our criteria for action, we will deny your petition without delay. In deciding whether to take action on your petition, we consider: the immediacy of the safety or security concerns you raise; their priority relative to other issues we must address; and the resources we have available to address these issues. We also may decline to handle your petition as a separate action if we are already addressing the issues you raise. For example, if we have tasked the

Aviation Rulemaking Advisory Committee (ARAC) to study the general subject area of your petition, we may ask ARAC to review and evaluate your proposed action as well.

If your petition for rulemaking meets these criteria for action, and we are not otherwise addressing the issues you raise, we will respond by issuing a Notice of Proposed Rulemaking (NPRM) no later than 6 months after we receive your petition. In such a case, we invite public comment on the proposed rule, rather than on your petition itself.

The FAA no longer publishes summaries of denials of petitions for rulemaking, in order to preserve resources for processing priority rulemaking actions.

Several commenters stated that we should reintroduce FAA's practice of notifying petitioners by mail of the disposition of their petitions. Although this notification was stated in old §§ 11.53(b) and 11.91(b), we inadvertently left this off our proposal. We never intended to eliminate this practice and will continue to notify petitioners directly. We have added a statement to this affect in the beginning of § 11.73 for petitions for rulemaking and new § 11.91(a) for petitions for exemption.

Petitions for Reconsideration of Denied Petitions

Final part 11 also creates a single, simplified section to explain how to ask FAA to reconsider a denial of a petition for rulemaking or exemption. It is a simplified version of the old rule that applied to denials of exemption (old § 11.55(d)). To get FAA to reconsider a denial, you must present a significant new fact and tell us why you didn't include it in your original petition. Or you have to show us how we made a significant factual error or misapplied a law, regulation, or precedent. If you can't do this, we won't be able to reconsider your petition.

Information about Delegations

We have removed almost all the references to internal FAA delegations relating to rulemaking actions. A number of these delegations in old part 11 are out of date. We will publish a separate notice in the Federal Register, telling you who exercises the authority of the Administrator in rulemaking matters. Doing this by notice instead of regulation will make it easier for us to keep this information current. You also can get this information from us at any time by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

Airspace Designations

The procedures for designation of airspace previously in subpart D of part 11 are a variation of the other rulemaking procedures covered elsewhere in part 11. Since final part 11 consolidates all our rulemaking procedures in one subpart, the only material remaining in part 11 specific to designating airspace is the material in new § 11.77, listing what information you must provide when you petition FAA to establish, amend, or revoke an airspace designation. This information is in addition to what you must provide with any other petition for rulemaking.

General Discussion of Comments

The NPRM appeared in the Federal Register on December 14, 1999, (64 FR 69856) and the public comment period closed January 28, 2000. We received comments from 21 different commenters. All commenters were generally supportive of the proposal. Commenters included aircraft manufacturers, operators, pilots, organizations representing these groups, and individuals. Commenters praised the NPRM format for its potential to enhance regulatory clarity and communication with the public

and for removing redundant and outdated information. Some commenters expressed specific concerns. We address these in detail in the following discussion.

First, we will discuss general comments and comments not specific to one section, then we'll discuss more specific comments organized by section.

Plain Language

Of the 21 individual commenters, 18 addressed the plain language format of the proposal. Without exception, they were supportive of the format. The following two examples are typical. "Three cheers to the FAA on your efforts to switch to plain language. I feel that it will increase safety, because the aviation community will be able to understand exactly what is expected of them and what they must do. Bravo." "I am a pilot and find this information to be much easier to read and comprehend than any other. It is organized and easy to follow. Hope to see more like it."

Several commenters, while positive about the plain language presentation in general, were skeptical about certain specific aspects. One commenter noted that "Plain language conversion lends itself to a simple administrative regulation such as FAR Part 11. However, providing similar treatment to more complex parts such as 23 or 121 may prove quite challenging. Yet, this is an effort that must be undertaken for the sake of clarity and understanding for both regulator and regulated."

Two commenters stated that they do not like the question and answer format in section headings. For example, one said "the question-and-answer format used for section headings in the proposal is an atrocious construction and an offence [sic] to the reader. Using this technique presumes that the reader cannot fathom simple declarative section headings. Further, it complicates the structure of the heading, impairs

understanding and reduces the ability of the reader to find subject headings." Another stated that "[we find] the question and answer (Q&A) format proposed in the regulations to be a barrier to efficient use of proposed new part 11. The Q&A format does not lend itself to use of the table of sections as a research tool; rather, this format forces the reader to read the table of sections like a novel, and inhibits quickly reviewing the section headings to locate required information. The Q&A format also imposes on proposed new part 11 a simplistic tone that is both at odds with the professional rigor and discipline that characterizes the revised section material itself, and which [our] members who reviewed the NPRM found pedantic and annoying."

One additional commenter stated that the question-and-answer format did not work for some of the specific sections, especially the "Applicability" section. On the other hand, three commenters spoke in support of the question-and-answer aspect of the format. For example, one stated "I like your use of the question-answer format. In the Coast Guard, we have found that even lengthy, highly technical regulations benefit from this format. On behalf of your readers, keep up the good work."

Other suggestions included making the section headings shorter. While we understand that readers very familiar with the material may not need long informative headings, we believe they are especially helpful to new readers. Informative headings serve as guideposts to help readers navigate through a complex document such as a regulation. Therefore, we have decided to retain the longer headings.

The FAA appreciates the overwhelming support of the general plain language format. We agree that this format is a better way to communicate with our various reader groups. While our resources will not enable us to write all new documents in this format,

we intend to move aggressively to make all our written material easier to understand and more reader-friendly. Regarding the question-and-answer format, headings as questions are not in any way intended to talk down to the reader. Public reaction to plain language regulations of other agencies that begin with questions has been generally favorable, especially from first time readers. Questions have a number of advantages. They ensure that a heading fully informs the reader of the content of the section. Since their scope is usually narrower than the traditional two or three word headings, sections tend to be shorter—an advantage to the reader. When the drafter thinks in terms of what questions the reader will ask, the information provided is more comprehensive and logically presented. We believe question headings are particularly helpful for general rules that reach a broad audience, such as part 11.

However, we do plan to use question headings with discretion. Question headings are not necessarily right for every subject matter. While we believe they are appropriate for the material presented in part 11, they may not work well for other, complex technical parts of the regulations. We will evaluate the subject matter carefully before we use them in our regulations.

Regarding writing most section headings as questions, but making an occasional exception, as one commenter seems to suggest, readability research shows that it's not a good idea to switch back and forth between heading types. Switching heading types can be confusing to the reader. So, while we agree that in a few cases--a definitions section would be a prime example--a question heading may not seem beneficial, the need to be consistent in heading type is important. Therefore, if we decide that a question-and-

answer format is overall the best approach for a particular rule, we generally will use question headings for all sections.

Reorganization of Definitions

Two commenters made essentially identical suggestions that FAA create a special section for definitions at the beginning of part 11. They suggested that a single section containing the definitions of the various types of rulemaking actions would result in a more concise and easier to understand regulation. They recommended "the FAA consolidate the definitions contained in §§ 11.13, 11.17, 11.19, 11.23, 11.25, 11.29 into a single section entitled 'Definitions'." Other commenters suggested we add additional definitions.

It has been FAA's practice to place definitions that apply to more than one CFR part of our regulations in 14 CFR part 1. Where a definition is needed only for a single CFR part we have placed it at the beginning of the part, along with others that apply just to that part. Having them at the beginning of the part is sometimes more convenient for the reader. It can also alert the reader that some terms in the part have a special meaning. Therefore, we have accepted this suggestion to place the definitions at the beginning of the part. However, we do not agree that it's a good idea to put all these definitions in one section. We believe this subject matter lends itself to separate sections for each term, principally because some of the sections are not simple definitions but expand on a topic and include regulatory material. We have moved all the "what is" questions closer to the beginning of the part and included a centered heading "Definition of Terms" to assist the reader looking for a specific definition. We have also added definitions of petition for exemption, petition for rulemaking, and special condition. One commenter suggested we

define the words "frivolous" and "insubstantial." We do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

Because we have moved the definitions to the beginning of the part, and added three additional definitions not found in the proposed rule, we have renumbered both the definitions sections and later sections in the rule, up through § 11.40. The following section-by-section discussion notes the number of each section in the proposed and final versions of the part.

Ex parte Issues

A number of commenters reacted strongly to our proposal to remove the statement in old § 11.65 that said an interested person is entitled to discuss or confer informally with appropriate FAA officials concerning a proposed action. Section 11.65 dealt only with issuing NPRM's for airspace assignment and use. It never applied generally to FAA's rulemaking process. Since this statement on its face purports to deal with requests made before, during, and after the comment period for a proposal, it is contrary to DOT ex parte policy. That policy prohibits non-public contacts with DOT officials once an NPRM has been issued. We said that where discussion of a proposal is appropriate, FAA would hold an open public meeting.

Our discussion of our proposed action was too brief and led many commenters to conclude that we proposed to prohibit all informal contacts with the public during the development of regulations. These contacts are commonly known as "ex parte contacts," since usually only one party to an issue is present at the meeting with the agency. DOT policy does not prohibit all such public contacts. In fact, DOT policy encourages

agencies to contact the public directly when we need factual information to resolve substantive questions. It also encourages agencies to be receptive to proper contacts from persons affected by or interested in a proposed action.

Under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety could affect public confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when during the rulemaking process the contact occurs. To ensure that the public understands what guidelines FAA follows in making or entertaining public contacts during rulemaking, we have added an appendix to part 11, setting out DOT policy on ex parte contacts.

DOT policy encourages FAA to collect relevant information from regulated parties before we issue an NPRM. However, once the public comment period begins and the rulemaking docket is open to accept written communications, DOT policy discourages oral communications on the proposal. Some commenters generally felt we were being overly restrictive and extreme when compared to other federal agencies. One organization said that the elimination of an individual's option to contact FAA personnel regarding the provisions of a proposed rule would severely curtail the public's ability to provide objective comments to FAA. We disagree with the commenter, since there is very little relevant information that cannot be presented to the public docket. The commenter also stated that holding public meetings, which it feels are a pulpit for narrow special interests, is not always possible. However, we have not had significant problems with holding public meetings where oral comments on a proposal would be helpful.

One organization acknowledges that DOT ex parte policy prohibits non-public contacts with DOT officials once an NPRM has been issued, but maintains that such non-public contacts provide a vital link between the flying public and appropriate authorities within FAA. It points out that aircraft type-clubs, aircraft owners and operators, and mechanics regularly use such "non-public" contacts as an informal way to gain the facts they need to provide objective comments to FAA rulemaking actions. The commenter asserted that elimination of this link effectively denies the public access to the rulemaking process.

DOT policy is designed to balance the need for collecting information with the benefit of an open process. It is essential that all interested persons have access to the views presented to FAA by other persons with competing interests. Every NPRM includes a contact person whom the public can call for information. However, this person cannot accept comments. When FAA receives an oral contact requesting information in addition to that provided in an NPRM, we provide only information that is publicly available to other interested parties.

This free exchange of ideas, facilitated by the public docket, ensures that we will make a well-informed decision. When FAA needs additional factual information to understand a comment or to support our analysis (for example, the availability of parts) , we may on our own contact an interested person. We make a record of that contact and enter it in the rulemaking docket, and, if it influences our decision, we discuss it in the preamble to the final rule.

A commenter said that caution should be exercised in prescribing an unduly broad definition of ex parte communications. The commenter read the proposal as declaring

that all non-public contacts with FAA officials once an NPRM has been issued constitute illegal ex parte communications. The commenter asserted that past practices generally permitted senior agency officials to docket a summary of discussions regarding a proposal in certain circumstances, rather than providing for an absolute bar of those discussions. The commenter urged FAA to maintain general procedures permitting free flow of information to the extent necessary to yield informed rulemaking decisions and in a manner that satisfies the requirements of the Administrative Procedure Act.

DOT policy strongly discourages ex parte contacts after the comment period is closed. Although there is no absolute bar to discussions regarding a regulatory proposal, FAA is generally cautious when meeting with parties interested in a proposal. If a meeting set up for another purpose turns to the topic of an NPRM, we caution the participants that we cannot discuss the proposal outside of a public meeting and invite them to file written comments to the docket. We think the written comment process and public meetings, where appropriate, are sufficient to ensure the free flow of ideas and an informed decision-making process.

Communications Regarding Petitions. One commenter was concerned that we were prohibiting contacts regarding petitions for rulemaking or exemption. The commenter stated it would be beneficial for the individual or company that has filed a petition for exemption to be able to keep in contact and communicate with the agency on the status of the exemption request. The commenter also stated it would be helpful to be able to comment or meet with personnel to discuss problems with the request and to provide facts to solve problems as they come up. We agree in part with the commenter. While FAA cannot advise petitioners on how to write petitions, or negotiate with

petitioners our final action on their petitions, we have always sought information directly from petitioners where we need that information to process a petition for exemption.

When we do this, we also put a record of the contact in the rulemaking docket.

Protecting Sensitive Information. Another commenter believed that meetings on some subjects, such as aviation security rules, should not be held in public. The commenter stated that any meeting can be held in private as long as the agency places a record of the meeting in the public docket, including general information that the meeting took place and what was discussed without detailing the sensitive information. The FAA in fact does not discuss security sensitive information in public. We even provide a separate confidential docket for some rulemakings, where commenters can supplement their public comments with sensitive information we agree we should protect.

In sum, we have not made any changes to the rule text itself regarding ex parte matters. We have added an appendix to part 11 to explain our ex parte policy.

Making the Process Open--the Docket Management System

The Secretary of Transportation has directed the Office of the Secretary (OST) and the DOT operating administrations to consolidate their separate paper-based docket facilities into a single, central facility and convert to an electronic image-based Docket Management System (DMS). In 1996, the Department changed the filing requirements for the OST docket by issuing a final rule, "Revised Filing Procedures for the OST Docket" (61 FR 29282). This final rule amended 14 CFR 302. The rule instructed the public how to submit items to DMS, then called the Docket Management Facility. This change enabled the Department to provide better service and access to the public and to government users. The FAA is currently using DMS to docket rulemaking projects

originating in FAA headquarters and regions, other than airworthiness directives and certain airspace actions. The FAA is working toward consolidating the FAA Rule Docket and its regional dockets into DMS. The consolidation will eliminate duplication, improve records management, enhance docket security, and provide easier public access by creating a single point of entry. An electronic image-based docket will provide public and government users with quicker access to docketed information, more sophisticated search capabilities, and electronic transmission of information to and from DMS. By transitioning to DMS, FAA will be able to accept electronic submission of petitions and the public will also be able to research dockets remotely using the Internet.

Special Conditions

We removed the discussion of special conditions previously in § 11.28 from the proposed version of part 11. The reason we gave for removing the section was that we follow the same rulemaking procedures for special conditions as we do for "general rules." This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of "particular applicability" under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition (new § 11.19). We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

The special conditions section that we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

Other General Issues

A number of commenters encouraged us to clarify and simplify other FAA regulations. We are in the process of doing this as our resources permit. One commenter specifically recommended that we work towards "the important objective of performance-based regulations." We are also doing this where the subject matter is appropriate, as we have been directed by the President's Executive Order 12866 on rulemaking.

Another commenter suggested that some specific sections be combined into one larger section. We have looked at the entire proposed layout of part 11 to decide whether some sections could be combined or rearranged. However, we believe it would be better to follow the plain language principle that shorter sections are easier to read and absorb.

Several commenters caught grammatical errors or inconsistencies in the proposed version of the part. We have fixed these problems but have not described them in this preamble. You can see all these comments on the Department of Transportation's electronic docket at <http://dms.dot.gov>, under docket number FAA-1999-6622. We appreciate commenters' taking the time to provide us with this help.

Section-by-Section Discussion

Section. 11.1 To what does this part apply?

This section explains what the part addresses. Aside from the issue about headings that we address in the "General Discussion of Comments" part of this preamble, we received no comments on this section. We adopt it as proposed.

Section 11.3 (Proposed § 11.13) What is an advance notice of proposed rulemaking?

Section 11.5 (Proposed § 11.17) What is a notice of proposed rulemaking?

Section 11.7 (Proposed § 11.19) What is a supplemental notice of proposed rulemaking?

Section 11.9 (Proposed § 11.23) What is a final rule?

These first several sections describe particular types of rulemaking documents. In response to comments about definitions, we've placed all definitions near the beginning of the part and have inserted a centered heading "Definition of Terms" immediately before § 11.3. We've discussed definitions in the "General Discussion of Comments" part of this preamble.

One commenter suggested a minor wording change for clarity to proposed § 11.23 (redesignated § 11.9). The FAA has accepted this suggestion in part, and has added the word "will" to the last sentence. Other than that minor change, and comments suggesting a reorganization of definitions, we received no comments on these sections and adopted them as proposed.

Section 11.11 (Proposed § 11.29) What is a final rule with request for comments?

This section defines how a final rule with request for comments differs from other final rules, on which we do not invite comment. We explain in the definition that we usually invite comment on these rules because we did not issue an ANPRM or NPRM. We also note that a final rule not preceded by a notice is commonly called an

"immediately adopted final rule." We had neglected to provide a definition of this rule type in the proposed rule.

One commenter suggested we change the wording of the heading to "immediately adopted" instead of "direct final." Apparently the commenter meant to refer to proposed § 11.25 (adopted as § 11.13), and we have addressed this comment in the discussion of that section.

The same commenter suggested moving this section to a consolidated definitions section. That comment is addressed in the General Comments part of this preamble.

Section 11.13 (Proposed § 11.25) What is a direct final rule?

This section defines a direct final rule, which is a type of final rule with request for comments not preceded by an NPRM. We issue a direct final rule when we do not expect to receive any adverse comments, and so notice is unnecessary. If we do receive an adverse comment or notice of intent to file an adverse comment, we withdraw the final rule before it becomes effective and can issue an NPRM.

Proposed § 11.25 described what types of comments FAA considers adverse, but in the final rule we have moved this discussion to § 11.31 where we describe the procedures we follow for these rules. We believe it fits better there.

A commenter on those procedures suggested we take out the word "generally" in reference to the 60-day time period between publication and a direct final rule's effective date, on the basis that a consistent time frame is desirable. While we agree that a consistent time frame is preferable, there may be some circumstances when a shorter or longer period is necessary. We decline to accept this comment.

The same commenter suggested we define the words "frivolous" and "insubstantial." As noted in the discussion of definitions, we do not believe this is necessary. We give these words no special meaning beyond the definitions found in any standard dictionary.

The same commenter suggested we change the heading of this section to refer to "immediately adopted" final rules rather than "direct" final rules. Any rule for which we do not issue an NPRM is commonly referred to as an "immediately adopted final rule." Although this expression does describe direct final rules, only a small percentage of rules issued without notice are direct final rules. Therefore, it would not be correct to change the section heading as the commenter requests.

Section 11.15 (New) What is a petition for exemption?

Section 11.17 (New) What is a petition for rulemaking?

In proposed § 11.61 we used a table to describe these types of petitions. In response to comments about definitions, we've added these two new definitions for petitions for exemption and petitions for rulemaking near the beginning of the part and have inserted a centered heading "Definition of Terms" immediately before this section. We've discussed definitions in the "General Discussion of Comments" part of this preamble. We have expanded § 11.61 and discuss the scope of petitions for exemption and petitions for rulemaking.

Section 11.19 (New) What is a special condition?

We did not include the section on special conditions in our proposed part 11. The FAA issues special conditions when we find that the airworthiness standards for a proposed aircraft, engine, or propeller design do not contain adequate or appropriate

safety standards, because of a novel or unusual design feature. The reason we gave for omitting the section was that we follow the same rulemaking procedures for special conditions as we do for "general rules." This statement may be misleading. Special conditions are not general rules, since they apply to a particular aircraft design. Because they are rules of "particular applicability" under the Administrative Procedure Act, the act does not require public notice and comment before we issue them. However, as we said in the notice, FAA does follow notice and comment procedures anyway, because we may receive useful information. We do not follow other procedures associated with general rules.

We have decided that the reader may find it helpful to have some discussion of special conditions in part 11. We have included a definition of a special condition. We also inserted a section (new § 11.38) stating that we generally follow notice and comment procedures and describing the situations where we do not do this.

Section 11.21 (Proposed § 11.3) What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act (APA)?

This section describes the major types of rulemaking actions FAA undertakes under the Administrative Procedure Act (APA). One commenter suggested changing this section to include Advisory Circulars (AC) and to clarify what FAA documents are not covered by this rule or by the APA. The FAA believes that it could be misleading to list in part 11 those documents, such as advisory circulars, that are not mandatory. Although advisory circulars, for example, cannot impose new requirements in addition to those in the regulations, they may contain sections that paraphrase the regulations. Also, to the

extent that a person chooses to follow an acceptable means of compliance explained in an AC, that method becomes mandatory for that individual.

Another commenter stated that use of the abbreviation "APA" in the title of the section was confusing. We agree, in this final version we've written out the name of the Act. The same commenter noted that in proposed § 11.3(a)(3), "Airspace Designations" should be "Airspace designations" since these are generic airspace designations rather than a specific document titled Airspace Designation. We disagree, since we use this term to refer to a specific type of designation, and have long used it as a proper noun. We have not accepted this suggestion.

We've changed the word "major" in paragraph (a) to "common," to be consistent with the heading of the rule.

We have omitted proposed paragraph (b) from this final version, and renumbered the paragraphs accordingly. Proposed paragraph (b) addressed exemptions. We have addressed exemptions more fully later in this regulation. Exemptions are not "common rulemaking actions" so we should not address them here.

Other than omitting proposed paragraph (b), changing the title of the section to spell out the name of the act, and changing "major" to "common" in paragraph (a), we adopt this section as proposed.

Section 11.23 (Proposed § 11.5) Does FAA follow the same procedures in issuing all types of rules?

This section states that in general, FAA follows the same procedures for all major rule types. It lists the few minor differences in FAA's rulemaking procedures. We received no comments on this section. We have removed the word "three" from the

heading, simply to give FAA flexibility in the future should we need to use some currently unanticipated form of rulemaking. Otherwise, we adopt it as proposed.

Section 11.25 (Proposed § 11.11) How does FAA issue rules?

This section describes the process FAA follows to issue rules. It lists the kinds of rulemaking documents we issue, as well as the types of information generally found in these documents.

One commenter suggested different language for proposed § 11.11(a). As proposed, the section said FAA may issue some type of rulemaking document during the rulemaking process. The commenter thought the section should state that FAA **will** issue a rulemaking document, and publish it within 30 days. The commenter doesn't specify from what point it wants FAA to count the 30 days.

The proposed version of this section did not mean that we would not issue any rulemaking document. Rather, we meant that we had the authority to issue whichever type of document was appropriate. To clarify our meaning, we have accepted this suggestion and changed "may" to "will" in the final rule. However, see the previous discussion of the rulemaking docket, in the section on Petitions for Rulemaking and Exemption in our discussion of "General Substantive Changes from the Proposed Amendment of Part 11." While resource concerns prevent us from making a commitment to make every document available within 30 days, we believe our expanded use of the electronic docket will make materials available to the public more quickly than currently is the case.

The same commenter thought proposed § 11.11(b)(4) was in conflict with the reason we provided for the elimination of § 11.65 of the old rule, which dealt with an

interested person's ability to discuss or confer informally with appropriate FAA officials concerning a proposed airspace designation action. The commenter asked for clarification of the intent of paragraph (4), which provides that FAA's rulemaking documents will include a person to contact if a reader has questions about the document. The commenter went on to suggest that any discussion with FAA about a rulemaking document be in the form of a written document accessible to other interested parties.

The FAA does not believe this provision conflicts with the elimination of § 11.65. This provision is meant to provide the public with a specific person to contact if they have questions about what a rulemaking document means, what FAA's schedule for the document is, or other general questions about the process. It is not intended to provide a contact that can enter into detailed discussions about what a proposal should say. We've discussed ex parte issues in the General Discussion of Comments part of this preamble. The FAA agrees with the commenter's second point, however. We believe all substantive comments on a proposed rulemaking should be available to other commenters. We are taking steps to make comments available to all through the DOT's electronic docket. We have added a statement to that effect in the final version of this section. We've discussed the electronic docket above, in the section on Substantive Changes part of this preamble.

The final version of this section differs from the proposed version in that we've changed "may" to "will." We've also added a statement about making documents available through the electronic docket, and provided the Internet address. Additionally, we made minor wording changes in the second sentence to clarify that this section covers changes to existing regulations as well as new regulations.

Section 11.27 (Proposed § 11.15) Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

This section discusses the role of the Aviation Rulemaking Advisory Committee (ARAC) in our regulatory process. It also provides that FAA may establish other rulemaking advisory committees as needed to focus on specific issues.

One commenter recommended this section prohibit the chairing of rulemaking advisory committees by a foreign government or a company owned by a foreign government. The FAA declines to add this material to the regulation. Many of the issues ARAC examines for FAA involve harmonization of FAA's rules with the rules of other nations. Harmonization of FAA and Joint Aviation Authorities (JAA) of Europe rules is in the best interests of the flying public and international aviation safety. It is a high priority of FAA's programs. Foreign nations must play an important role in any committee examining harmonization issues. To achieve the goal of harmonization, we seek industry advice and recommendations by using the ARAC. The JAA seeks similar input from the JAA study group, a European industry advisory body. Administratively, ARAC uses working groups to carry out its work. Since harmonization is a collaborative international effort, FAA uses working group co-chairs representing U.S. and European interests as a means for reaching consensus on technical matters. This is a long-standing practice of ARAC.

However, FAA does not allow foreign governments to chair a rulemaking committee. Contrary to the commenter's opinion, non-U.S. citizens do not develop proposals that regulate U.S. citizens. These international working groups provide recommendations to the ARAC which, in turn, approves or disapproves a particular

action. ARAC provides a recommendation to the FAA after public deliberation. The FAA makes the final decision to adopt or amend a particular rule. It does so through the public comment procedures outlined in this part.

Another commenter stated that when FAA receives a recommendation from the ARAC, FAA should publish an NPRM if we accept the recommendation. We should also publish an explanation of our denial, if we do not accept the recommendation, just as we would do with a comment from the public. The FAA disagrees with this comment. The ARAC is chartered to function with FAA in an advisory capacity. A recommendation from ARAC is not the same as a comment from the public.

For the reasons discussed above, FAA declines to change this section in response to comments, and we adopt it as proposed.

Section 11.29 (Proposed § 11.21) May FAA change its regulations without first issuing an ANPRM or NPRM?

This section discusses the circumstances under which FAA might adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM.

One commenter suggested FAA should define the term "immediately adopted." We've discussed this under final § 11.13.

Another commenter suggested that, while the FAA may issue a final rule without an NPRM in special circumstances, we should tell the reader that this is not our ordinary practice. We agree and have added an introductory sentence clarifying this point.

This section includes a statement that an example of a final rule without notice is one issued in response to a safety emergency. One commenter suggests that we should mention in this section "significant airworthiness emergencies." We don't think we need

to list the kinds of emergencies for which we could use an immediately adopted rule, although an airworthiness emergency is clearly one of them. Agencies have the authority to issue any emergency rule under the Administrative Procedure Act. We don't need an exhaustive statement of the possibilities in part 11 to allow us to issue these rules.

One commenter suggested that we limit the criteria for adopting final rules without comment to editorial changes or corrections. We believe that would be too restrictive. Sometimes we have to adopt a final rule without comment because of a clear and immediate safety hazard or for some other reason. Therefore we do not accept this comment.

We've also changed this section by removing reference to an "immediately adopted" rule. Commenters were apparently confused about this term. As noted in the discussion of final § 11.13, this term is not an accurate description of these rules, and indeed some of them are not adopted immediately. We have not added any reference to "immediately adopted" rules in this section of the final rule, although we do mention it in § 11.11.

Section 11.31 (Proposed § 11.27) How does FAA process direct final rules?

This section describes how FAA processes direct final rules when we receive no adverse comments, and when we do receive adverse comments.

One commenter suggested that we remove the word "generally" from the reference in the section to the 15-day time period within which we publish a Federal Register notice confirming that we are adopting a direct final rule. The commenter stated that it was important that FAA provide timely notice. While we agree we need to provide timely notice of rules we adopt, and we strive to publish these notices within 15 days, it is

not always possible to achieve this goal. However, we will publish this notice before the effective date of the direct final rule. We decline to adopt this suggestion, it is too inflexible and does not allow us to address special circumstances.

The same commenter suggested we insert the words "in a timely manner" where the proposal stated that we will "publish a confirmation document...before the effective date of the direct final rule." We do not believe this is necessary. Our commitment to publishing this notice before the effective date of the direct final rule ensures that the notice will be timely. In practice, we do strive to publish this notice as soon as possible.

We have also moved the discussion of what FAA considers an adverse comment from proposed § 11.27 to § 11.31. We believe it fits better here. We have not changed this discussion substantively. When we receive an adverse comment about a direct final rule, we do not implement the rule. Rather, we advise the public by publishing a document in the Federal Register before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

We have made two additional word changes. To be consistent with the pattern we've followed throughout the rule, we've replaced "We" with "FAA" in the title of this section. In § 11.31(c) (proposed § 11.27(b)), in reference to withdrawing a direct final rule in response to an adverse comment, we've changed "this document will withdraw the direct final rule" to "this document may withdraw the direct final rule." We are making this change because in some cases, we may be able to resolve the adverse comment

without withdrawing the rule. For example, we may publish a clarification of the rule addressing the adverse comment. This is a change from the previous rule (§ 11.17), which said that "a document withdrawing the direct final rule will be published in the Federal Register...."

Section 11.33 (Proposed § 11.31) How can I track FAA's rulemaking activities?

This section lists several ways the public can find information about FAA's rulemaking.

One commenter suggested that this section contained too many levels, and was confusing. The commenter suggested breaking up the section. While we have decided not to break up the section, we have edited it to remove excess words. This allowed us to reduce the number of levels in the section. This editing did not result in any substantive changes.

Another commenter suggested changing the heading of the section to make it a shorter statement. We've covered this issue in the Plain Language discussion in the General Discussion of Comments part of this preamble.

Additionally, we have deleted from the final version of this section reference to particular types of rulemaking actions that you can find in the electronic docket. Since we published the proposed rule, we have been exploring ways to make our rulemaking documents readily available to the public. We intend to expand the types of documents available through the electronic docket as soon as we can. Since we are not sure at this time exactly when we will be able to include each type of document, we have eliminated any list of specific document types from the regulation. We have added information about where to call if you can't find the material in the electronic docket.

Section 11.35 (Proposed § 11.33) Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?

As proposed, this section addressed only sensitive security information. In response to comments, we have expanded the section to cover proprietary and confidential information.

As in the proposal, this section states that you should not submit sensitive security information to the public docket. It states that when FAA believes we need this type of information, we will ask for it and provide a separate non-public docket. As we stated in the proposal, for all dockets involving security requirements, we review comments as we receive them, and if we find that a comment contains sensitive security information, we remove that information before placing the comment in the docket.

One commenter recommended that we add "proprietary" business information to the title and exclude it from the public docket. We have accepted the addition of "proprietary information" to the title of this section. However, FAA seldom receives proprietary information with comments. If we are aware that information submitted is proprietary, we do not file it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 USC 552). We process such a request under the DOT procedures found in 49 CFR part 7.

We have changed the heading of this section to include a reference to proprietary information. Also, we have written out Docket Management System, instead of abbreviating it.

Section 11.37 (Proposed § 11.35) Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

This section tells readers whom to contact to get information about Federal Register documents originating in a region.

The FAA received no comments on this section. However, we have changed the final version to indicate that many of these actions will be included in the Department of Transportation's electronic docket.

Section 11.38 (New) What public comment procedures does FAA follow for Special Conditions?

As we note above in our discussion of § 11.19, we have decided that the reader may find it helpful to have some discussion of special conditions in part 11. This new section states that we generally follow notice and comment procedures and describes the situations where we do not do this.

The special conditions section we removed from part 11 noted that FAA does not hold public hearings, argument, or formal hearings before issuing a special condition. Although the procedures in this revised part 11 regarding public hearings would theoretically apply to special conditions, it continues to be unlikely that we would grant a request for a public meeting. In most cases such a meeting would not provide more information than written comments. Also, it would be difficult to protect the proprietary information involved in the certification process in a public discussion.

Section 11.39 (Proposed § 11.37) How may I participate in FAA's rulemaking process?

This section describes the ways you can participate in FAA rulemaking--commenting on public rulemakings, filing a petition for rulemaking, and participating in a public meeting.

One commenter suggested we replace the words "advanced notice of proposed rulemaking" and "notice of proposed rulemaking" with their abbreviations, to be consistent with other sections of the rule. We agree and have made the change.

We have also added a statement at the end of paragraph (a) to emphasize that commenters should follow the directions for commenting found in each rulemaking document. The FAA intends to make increasing use of the Department of Transportation's electronic docket. Over time readers will find more and more documents referencing the docket as the preferred method of taking comments.

Finally, we have eliminated paragraph (d) concerning appeals. We should not have included this material in the proposal. Appeals are not part of the rulemaking process, which is the subject of this section.

Otherwise, we adopt the section as proposed.

Section 11.40 (New) Can I get more information about a rulemaking?

This section was not in the proposed rule, we added it in response to comments. It states that you can contact the person listed under "FOR FURTHER INFORMATION CONTACT" if you have questions about a proposal, and describes the types of information you can get from that person.

Section 11.41 Who may file comments?

This very brief section states that anyone may file comments on any FAA rulemaking that requests comments.

One commenter suggested we change this section to limit participation in our rulemaking process to parties who have a specific interest in the process, on the grounds that this would reduce work and eliminate frivolous comments. Another commenter stated that "Section 11.41 should be amended so that comments submitted by United States citizens and businesses are considered before comments submitted by foreign governments, businesses, or citizens not holding an FAA-issued certificate for conducting operations in the United States.... A proposed regulation that is based on quantifiable safety data should not be rejected, amended, or altered simply because a competing foreign government believes that the proposal is not compatible with the laws and regulations of their country."

In response to both comments, FAA notes that the rulemaking process is governed by the Administrative Procedure Act (APA). While we are not required to consider frivolous comments, we cannot establish any sort of standing requirement for who can or cannot comment, nor can we establish criteria for whose comments we consider more important. The APA is intended to provide a broad base of comments on a federal agency's NPRM. It is in the public interest that we consider each comment on its own merit. It is in the best interests of the flying public and of international aviation safety for us to strive for harmonization with the laws and regulations of foreign countries. For this reason, it is appropriate that we also accept comments from foreign citizens and governments.

For these reasons, FAA declines to accept these comments, and adopts the section as proposed.

Section 11.43 What information must I put in my written comments?

This section details the information commenters must include in written comments.

One commenter suggested we add to this section a requirement that commenters be required to state their interest in the particular rulemaking. For the same reasons discussed above under § 11.41, we decline to accept this comment.

Another commenter was concerned about the use of the word "must" in the heading. The commenter stated "this section may be interpreted to impose unreasonable and unnecessary burdens on the public."

The FAA agrees. We have divided the final section into two major paragraphs, one covering required information and one covering information which you should submit, if it's available to you. We have also reworded the section to clarify the information requirements. We will understand your position better if you are able to give us this supporting material.

§ 11.45 Where and when do I file my comments?

This section explains how to file paper or electronic comments, and the need to file comments by the deadline.

One commenter suggested we add to paragraph (a) "Any other means designated by the FAA" to provide FAA flexibility to designate an alternative method for submittal of comments. We appreciate the suggestion. Given the pace of change in electronic

technology, it is certainly possible that we will develop a new way of submitting comments. We have added language to this effect in paragraph (a).

The same commenter further suggested we split paragraph (c) into two paragraphs, one to address FAA's rejection of frivolous, abusive, or repetitious comments, the other to address instructions for electronic filing. Further, the commenter suggested FAA should include in the section a provision that we would provide instructions in the proposed rule, as well as on the web site, about how to file comments on the web site.

The FAA doesn't believe it's necessary to provide instructions in the proposal itself about how to file comments on the web site, beyond information about how to find the web site, where there are detailed instructions. This would be redundant and add unnecessary material to part 11. We decline to accept this comment. However, we have added the term "Docket Management System" in front of the word "website" to clarify that we are talking specifically about the website for that system.

In sum, FAA has added the suggested statement to paragraph (a) of this section, added the clarifying term "Docket Management System," and divided the material into paragraphs on required information and supporting information; otherwise we adopt the section as proposed.

Section 11.47 May I ask for more time to file my comments?

This section explains how you can ask for more time to file comments, and how FAA evaluates your request.

One commenter criticized the structure of the section, noting that paragraphs (a) through (d) were not parallel. The commenter provided alternative language, which FAA

agrees is superior. We have used the suggested language in this final rule. This is not a substantive change.

Another commenter suggested we add "in a timely period" in two places in the introductory part of this section to clarify that FAA must provide timely notification of an extension of the comment period on a rulemaking action, and of our denial of an extension of the comment period. This commenter also mentioned a specific instance when notification of an extension request was not timely.

The FAA declines to accept this suggestion. We must publish a Federal Register notice of any extension of a comment period before the original comment period expires. Otherwise, we must reopen the comment period for additional comments. This requirement ensures that, to the extent possible, we publish comment period extensions as quickly as possible. The FAA has in place procedures to ensure timely notification when we deny someone's request for extended time. We believe these procedures generally work well, and regret that the commenter did not receive timely notification in a specific instance.

In sum, FAA has substituted the language suggested by the first commenter for paragraphs (a) through (d). Otherwise, we adopt the section as proposed.

Section 11.51 May I request that FAA hold a public meeting on a rulemaking action?

This section describes how you can request a public meeting, and what FAA considers in evaluating your request.

One commenter suggested alternative wording for this section. The FAA agrees the suggestion is superior to FAA's proposal, and has substituted the commenter's suggestion. This is not a substantive change.

Another commenter suggested we specify we will provide 60 days for people to request meetings, on the basis that this would give them time to review complex proposals before deciding to request a meeting. We cannot accept this suggestion. In most cases, rulemaking actions are open for comments for 60 days. We must receive requests for meetings early enough to schedule a meeting within that 60-day comment period. In cases where rules are particularly complex or we receive compelling reasons to provide more time, we will provide a longer comment period.

Several commenters on this section raised the issue of ex parte contacts. We have discussed this issue in the General Discussion of Comments part of this preamble.

For these reasons, FAA has adopted the substance of the section as proposed, using the clearer wording provided by the commenter.

Section 11.53 What takes place at a public meeting?

This section describes public meetings held during the rulemaking process.

The FAA received no comments on this section, except one related to the issue of ex parte contacts. We discuss that issue previously, in the General Discussion of Comments part of this preamble. We removed the final sentence as it is misleading in its mention of the Administrative Procedure Act. Other than this minor administrative change, we adopt the section as proposed.

Section 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

This section describes how FAA processes petitions for exemption and rulemaking. In proposed § 11.61, we used a table to show how to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation. In response to

comments about combining definitions, we have moved these definitions to the newly created section "Definition of Terms" near the beginning of the part. We've discussed definitions in the General Discussion of Comments part of this preamble.

We have expanded final § 11.61. It now discusses the scope of petitions for exemption and rulemaking. It clarifies that petitions for rulemaking and petitions for exemption apply only to Title 14 of the Code of Federal Regulations.

Section 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

This section provides an address to which you should send your petition for rulemaking or petition for exemption. As we explained in the proposal, the section no longer discusses where to file petitions for exemption from the medical standards in part 67, since exceptions to these standards are now handled by special issuances under § 67.401. As part of FAA's effort to make our rulemaking materials more accessible to the public by using DOT's Docket Management System (DMS), you should submit all petitions to DMS.

One commenter criticized the tabular format used to present the address information in the proposed rule. We agree, and in the final rule we no longer display the address information in a tabular format because we have made the process simpler by having all petitions sent to the same address. We have also reworded paragraph (b) for clarity.

Another commenter suggested we add "Any other means designated by the FAA" to provide FAA flexibility to designate an alternate method for submittal of comments. For reasons discussed in § 11.45, we have added language to this effect.

In response to commenters questions that we did not specify time periods for actions, we have added a provision (§ 11.63(d)) requiring anyone petitioning for an exemption to submit their petition 120 days before they need the exemption to take effect. We have also changed the first word in the title of the section from "where" to "how" to accommodate this addition. Although we did not retain the wording in the NPRM, this is not a new provision. The same requirement occurred in the previous version of part 11 at § 11.25. Because the time required to process petitions is so variable, we believe it is best not to place a specific timing requirement on the petitioner or on FAA. However, for clarity, we have added the 120-day period for submission of a petition in the final rule. While FAA processes most petitions within a shorter period, particularly complex petitions may require a longer period for FAA review. Additionally, FAA must give safety matters our highest priority, and this may prevent us from providing the relief in the timeframe requested by the petitioner. You can help ensure that FAA can process your petition for exemption in time to serve your needs by sending us your petition as soon as you know you need the exemption. Section 11.81 (What information must I include in my petition for an exemption?) repeats this caution in the first sentence. Other than the changes mentioned above, we have adopted this section as proposed.

Section 11.71 What information must I include in my petition for rulemaking?

This section lists the information you must include in your petition for rulemaking.

One commenter requested a slight rewording of § 11.71(b)(3) for clarity. The FAA agrees and has replaced the word "they" with "the burdens" to clarify the sentence.

Another commenter recommended that a new paragraph (b)(5) be added to this section to read "The FAA will not publish information that has been declared proprietary and/or confidential business information by the submitter." We address this issue above under the discussion of final § 11.35.

Other than the editorial change to § 11.71(b)(3) we adopt this section as proposed.

Section 11.73 How does FAA process petitions for rulemaking?

This section discusses how FAA handles petitions for rulemaking, including under what circumstances FAA may dismiss your petition.

In response to several commenters and as discussed previously in our Petitions for Rulemaking and Exemption preamble portion of "General Substantive Changes from the Proposed Amendment of Part 11," we have added a new sentence at the beginning of this section to preserve FAA's practice of notifying petitioners of the disposition of their petitions.

One commenter made suggestions to modify the sentence structure to clarify the section. We have accepted these non-substantive changes and redesignated paragraph (b)(1) through (b)(4) as paragraphs (b) through (e). Additionally, we have added a sentence to paragraph (e) (proposed (b)(4)) to explain that, while we may have to deny a petition, we do keep issues that may warrant future rulemaking in our database for possible further action.

Another commenter requested that paragraph (d) (proposed paragraph (3)) dealing with petitions involving issues already being considered by ARAC be revised by replacing the word "may" to "will" in the first sentence to reflect that "...any information or requests the FAA receives regarding a subject the FAA has tasked ARAC to study

should be passed to ARAC for review and consideration." The FAA agrees. The language used in the proposal was confusing. Currently, if ARAC is studying the subject area of a petitioner's request, we forward the petition to ARAC for consideration.

We have also made minor wording changes in final paragraph (e) for clarity.

Other than these changes, we adopt this section as proposed.

Section 11.75 Does FAA invite public comment on petitions for rulemaking?

This section states that FAA does not invite public comment on petitions for rulemaking.

One commenter stated this section was superfluous and should be removed. We decline to eliminate this statement. As discussed previously in our Petitions for Rulemaking and Exemption portion of "General Substantive Changes from the Proposed Amendment of Part 11" section, this was a major change from old part 11 procedures and we need to make sure the public understands this change in our procedures.

Another commenter stated that while FAA "...should not be expending valuable resources in publishing all rulemaking petitions it receives...there is value in the continued publication of summaries of some rulemaking petitions." Basically, "...in cases where the FAA finds that a petition for rulemaking meets its criteria, it would be in the public interest for the FAA to publish a summary of such rulemaking petition. This would provide an opportunity for the sharing of added perspective on such issues prior to the FAA expending the significant amount of resources that are necessary to develop and issue a notice of proposed rulemaking."

The FAA disagrees. When we accept a petition for immediate rulemaking, it is because we determine that the issue is an immediate aviation safety concern and we

should concentrate agency resources to respond within 6 months with publication of a rulemaking document (an NPRM or ANPRM). The public then has ample opportunity to assist us by commenting on the proposal and sharing its perspectives, so that the final rule best serves all concerned. Publishing a summary for these petitions would inhibit FAA's ability to develop a rule change to address this safety concern in a timely manner.

Congress passed the Federal Aviation Reauthorization Act of 1996

(49 U.S.C. 40101) which provides that--

"...The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking."

Since passage of the Act, FAA has not published petitions for rulemaking for public comment, as we must make the determination whether to reject or accept the petition. Our present procedure of responding to petitions within 6 months with a denial or a regulatory document is timely and responsive. Also, our increasing use of the electronic docket will enhance public access to and participation in our rulemaking program. See our previous discussion in the preamble in "Making the Process Open--the Docket Management System."

Section 11.77 Is there any additional information I must include in my petition for designating airspace?

Proposed § 11.77 lists additional information you must include in a petition to establish, amend, or repeal an airspace designation. There were no comments on this section, and we adopt it as proposed.

Section 11.81 What information must I include in my petition for an exemption?

This section lists information you must include in your petition for an exemption.

Because of questions from commenters, for clarity, we have added a caution in the first sentence of this section that petitioners should submit petitions to FAA as soon as they see the need for relief. We have also added the 120-day period for submission of a petition that was found in the previous version of part 11 back into the final rule in § 11.63(d). The FAA will, however, continue to process petitions as expeditiously as possible.

One commenter suggested that paragraph (a) be re-written to differentiate between the petitioner, the petitioner's representative, and any other interested party. We do not believe we need to do this in regulatory language. We already differentiate between the petitioner and the petitioner's representatives in processing the petition. If we are unsure of the representative's legal right to petition on behalf of a particular entity, we check before processing the petition. The web site for the electronic docket has separate fields for the petitioner information and the petitioner's representative information. As with the paper-based docket, if we are unsure of a party's right to petition on behalf of a particular entity, we will check further before processing the petition.

The same commenter also suggested rewriting paragraph (d) to include the benefit of the exemption to the petitioner. When analyzing a petition for exemption, FAA must determine that granting the request for relief from FAA's regulations is in the general public interest and that the request does not compromise safety. The petitioner may show how its own interests are consistent with the public interest, but to require the petitioner to do so would suggest that the petitioner's interest is equivalent to the public interest. For these reasons, we decline to accept this suggestion.

Another commenter requested that we add a statement saying FAA will base its decision to grant or deny a petition for exemption on the adequacy of the information submitted by the petitioner. We decline to accept this addition. The FAA currently considers the nature and adequacy of information supplied by the petitioner, along with many other factors, in deciding to grant or deny a petition for exemption. We also take into account information from our regional and field offices concerning the circumstances of the petitioner and the overall affect of granting the petitioner's request. Furthermore, we also take into account comments received from other interested parties and overall agency policies and goals.

One commenter suggested we reverse the order of paragraphs (f) and (g). The FAA has accepted this suggestion and made the non-substantive changes.

We have also reworded paragraph (h) to be consistent with changes in final § 11.85. Otherwise, we adopt the section as proposed.

Section 11.83: How can I operate under an exemption outside the United States?

This section explains how you can operate under an exemption outside the United States. We did not receive any comments on this section, but we have slightly modified it.

First, we changed the title of the section to take into account that there are exemptions currently in effect that apply to operations outside the U.S. When we issued these exemptions, we did not determine whether they are consistent with the Standards of the International Civil Aviation Organization (ICAO). In recent discussions with ICAO we have agreed that from now on we will file a difference when we issue such an exemption. Otherwise, we will limit the exemption to use within the U.S. We intend to apply this approach to already existing exemptions as we renew them. We also intend to review current permanent exemptions and file differences, where necessary.

Resources do not permit us to take the time to determine whether every grant of exemption could result in a deviation from ICAO Standards. For this reason, we have modified proposed § 11.83 to provide that a petitioner who wants to use an exemption outside the U.S. must give us the reason for this use. If petitioners do not tell us that they want to use the exemption outside the U.S., or the reason given does not establish a need, we will limit your exemption to use within the U.S.

Before we extend an exemption to operations outside the U.S., we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow the petitioner to do so, we will file a difference with ICAO. We

note in the section that a foreign country may not allow petitioners to operate in that country without meeting the ICAO standard.

Section 11.85 Does FAA invite public comment on petitions for exemption?

This section discusses how FAA publicizes petitions.

One commenter suggested that we add a new paragraph requiring commenters to state their interest in a petition for exemption. We address this issue above under the discussion of final § 11.81, and we adopt the section as proposed.

Section 11.87 Are there circumstances under which FAA may decide not to publish a summary of my petition for exemption?

This section explains what information you must provide to FAA to convince us not to delay your petition by publishing it. One commenter suggested that we eliminate § 11.87(a). The commenter believes that whether a petition sets a precedent or not should have no bearing on the decision to publish a summary of a petition for exemption. We decline to accept this change. The FAA usually does not publish petitions if we have already published another petition with similar facts and circumstances and received no comments or no adverse comments. It would be an inefficient use of agency resources to publish similar requests for comments. Furthermore, the delay caused by publication could be detrimental to the petitioner. The same petitioner also suggested that we add a new paragraph stating that FAA will not publish information declared proprietary by the petitioner in the Federal Register summary. We do not currently publish proprietary information in the summary and will continue this policy in the future.

Section 11.89: How much time do I have to submit comments to FAA on a petition for exemption?

This section lists the amount of time FAA usually allows for comments on a petition for exemption.

One commenter suggested that we allow a minimum of 30 days to comment on a petition for exemption. The commenter stated that a 20-calendar day comment period leaves the public with only 15 business-days to review the petition and prepare a comment. The commenter believes that a 30-calendar day comment period would allow the public to conduct a more thorough review of the petition and prepare more substantive comments.

The FAA receives over 500 petitions for exemption each year. Approximately 95 percent receive no comments; of the remaining 5 percent less than half receive more than one comment. The FAA makes every reasonable effort to include comments received after the close of the comment period.. We will consider requests to extend the comment period on a case-by-case basis. A standard 30-day comment period would unreasonably delay our processing of a petitioner's request. Therefore, we decline to accept this change and we adopt the section as proposed.

Section 11.91 How does FAA inform me of its decision on my petition for exemption?

This section explains how FAA informs a petitioner of our decision. Proposed § 11.91 listed what information FAA publishes after making a decision about a petition for exemption. In response to several comments, and as discussed previously in the "General Substantive Changes from the Proposed Amendment to Part 11" section, we have added a new paragraph (a) to clarify that we do notify petitioners of our decision on

their petitions. We have renumbered the rest of the section accordingly. Also, we caught errors in the language in proposed § 11.91(c) and (d) (now § 11.91(b)(3) and (4)) that did not pertain to petitions for exemption. We have made minor wording changes in these paragraphs to eliminate the inconsistencies.

One commenter suggested changing "your petition" in proposed § 11.91(b) to "Name of the entity for which the petition was submitted." The FAA has declined to accept this change. The suggested wording is not in line with the principles of plain language. For a more detailed discussion of plain language, see the plain language section in the "General Substantive Changes to the Proposed Amendment to Part 11". The FAA has always differentiated between the petitioning entity and its representative.

The same commenter also suggested rewriting proposed § 11.91(e) (now § 11.91(b)(5)) to include an explanation of FAA's decision. The purpose of the Federal Register summary is to inform the general public of petitions for exemption on which FAA has made a decision. Any party interested in the rationale behind the agency's decision may get a copy of the exemption from the DMS web site or request a copy from the contact listed in our Federal Register Summary Notice. It is not practical to publish an explanation of each disposition.

Other than the changes described above, we adopt this section as proposed.

Section 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

This section explains how you may request FAA to reconsider petitions we have denied.

One commenter suggests that we replace the word "Can" with "May" in this section title to be consistent with similar questions and answers throughout this rule. We agree with this suggestion and have changed this section accordingly.

Another commenter asserts that the language in § 11.101(a) and (b) is more onerous and rigorous than the language in old § 11.55(d). We disagree, the language in this section was chosen to add clarity and is consistent with the intent of old § 11.55.

Other than the non-substantive changes mentioned above, we adopt this section as proposed.

Section 11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act

This subpart consolidates and displays a chart of the OMB assigned control numbers for the information collection requirements of the FAA as required in the Paperwork Reduction Act of 1995.

One commenter stated that use of the abbreviation "OMB" in the title of the section was unclear. We agree, in this final version we have written out the name of the office. Other than this change in the title of the section we adopt this section as proposed.

Paperwork Reduction Act

This part does not include any information collection requirements for which we need approval from the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This part simply addresses general rulemaking procedures. Any information collection requirements created by specific parts of FAA's regulations are addressed at that particular part.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only after making a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in State, local, or private sector expenditure of \$100 million or more of non-federal funds in any one year (adjusted for inflation.).

However, if the agency expects the regulations to have a minimal impact, the agency does not have to perform these analyses. The Department of Transportation Order's DOT 2100.5 prescribes policies and procedures for simplification, analysis, and

review of regulations. If the agency expects an impact so minimal that the proposed or final rule does not warrant a full evaluation, the agency should include a statement to that effect and the basis for it in the regulation. Since this final rule revises and clarifies FAA rulemaking procedures and since no adverse comments were received regarding FAA's initial finding of minimal impact, FAA continues to expect the rule to have a minimal impact with some positive net benefits.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that goal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act allows the head of the agency to so certify. In that case,

the agency does not have to do a regulatory flexibility analysis. The certification must be clearly reasoned and include a statement providing the factual basis for the determination.

This action revises and clarifies FAA rulemaking and therefore FAA expects this rule to impose no cost on small entities. Consequently, FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires the agency to consider international standards and, where appropriate, use them as the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade. These barriers include both those affecting the export of American goods and services to foreign countries and those affecting the import of foreign goods and services into the United States.

The FAA has assessed this final rule's potential effect on international trade to be minimal. Therefore FAA determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing

unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule likely to result in State, local or tribal governments or private sector expenditure of \$100 million or more of non-federal funds in any one year (adjusted for inflation.).

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this regulation.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The FAA has assessed the energy impact of this rule under the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA

Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Amendment

In consideration of the above, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

1. Revise part 11 to read as follows:

PART 11--GENERAL RULEMAKING PROCEDURES

Subpart A--Rulemaking Procedures

Sec.

11.1 To what does this part apply?

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11.3 What is an advance notice of proposed rulemaking?

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11.7 What is a supplemental notice of proposed rulemaking?

11.9 What is a final rule?

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11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

11.89 How much time do I have to submit comments to FAA on a petition for exemption?

11.91 How does FAA inform me of its decision on my petition for exemption?

11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Subpart B--Paperwork Reduction Act Control Numbers

11.201 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act.

Appendix 1 to Part 11--Oral Communications With the Public During Rulemaking

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, and 46102.

Subpart A--Rulemaking Procedures

§ 11.1 To what does this part apply?

This part applies to the issuance, amendment, and repeal of any regulation for which FAA ("we") follows public rulemaking procedures under the Administrative Procedure Act ("APA") (5 U.S.C. 553).

Definition of Terms

§ 11.3 What is an advance notice of proposed rulemaking?

An advance notice of proposed rulemaking (ANPRM) tells the public that FAA is considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. An advance notice of proposed rulemaking may or may not include the text of potential changes to a regulation.

§ 11.5 What is a notice of proposed rulemaking?

A notice of proposed rulemaking (NPRM) proposes FAA's specific regulatory changes for public comment and contains supporting information. It includes proposed regulatory text.

§ 11.7 What is a supplemental notice of proposed rulemaking?

On occasion, FAA may decide that it needs more information on an issue, or that we should take a different approach than we proposed. Also, we may want to follow a commenter's suggestion that goes beyond the scope of the original proposed rule. In these cases, FAA may issue a supplemental notice of proposed rulemaking (SNPRM) to give the public an opportunity to comment further or to give us more information.

§ 11.9 What is a final rule?

A final rule sets out new or revised requirements and their effective date. It also may remove requirements. When preceded by an NPRM, a final rule will also identify significant substantive issues raised by commenters in response to the NPRM and will give the agency's response.

§ 11.11 What is a final rule with request for comments?

A final rule with request for comment is a rule that the FAA issues in final (with an effective date) that invites public comment on the rule. We usually do this when we have not first issued an ANPRM or NPRM, because we have found that doing so would be impracticable, unnecessary, or contrary to the public interest. We give our reasons for our determination in the preamble. The comment period often ends after the effective date of the rule. A final rule not preceded by an ANPRM or NPRM is commonly called an "immediately adopted final rule." We invite comments on these rules only if we think that we will receive useful information. For example, we would not invite comments when we are just making an editorial clarification or correction.

§ 11.13 What is a direct final rule?

A direct final rule is a type of final rule with request for comments. Our reason for issuing a direct final rule without an NPRM is that we would not expect to receive any adverse comments, and so an NPRM is unnecessary. However, to be certain that we are correct, we set the comment period to end before the effective date. If we receive an adverse comment or notice of intent to file an adverse comment, we then withdraw the final rule before it becomes effective and may issue an NPRM.

§ 11.15 What is a petition for exemption?

A petition for exemption is a request to FAA by an individual or entity asking for relief from the requirements of a current regulation.

§ 11.17 What is a petition for rulemaking?

A petition for rulemaking is a request to FAA by an individual or entity asking the FAA to adopt, amend, or repeal a regulation.

§ 11.19 What is a special condition?

A special condition is a regulation that applies to a particular aircraft design. The FAA issues special conditions when we find that the airworthiness regulations for an aircraft, aircraft engine, or propeller design do not contain adequate or appropriate safety standards, because of a novel or unusual design feature.

General

§ 11.21 What are the most common kinds of rulemaking actions for which FAA follows the Administrative Procedure Act?

FAA follows Administrative Procedure Act (APA) procedures for these common types of rules:

- (a) Rules found in the Code of Federal Regulations;
- (b) Airworthiness directives issued under part 39 of this chapter; and
- (c) Airspace Designations issued under various parts of this chapter.

§ 11.23 Does FAA follow the same procedures in issuing all types of rules?

Yes, in general, FAA follows the same procedures for all rule types. There are some differences as to which FAA official has authority to issue each type, and where you send petitions for FAA to adopt, amend, or repeal each type. Assume that the procedures in this subpart apply to all rules, except where we specify otherwise.

§ 11.25 How does FAA issue rules?

(a) The FAA uses APA rulemaking procedures to adopt, amend, or repeal regulations. To propose or adopt a new regulation, or to change a current regulation, FAA will issue one or more of the following documents. We publish these rulemaking documents in the Federal Register unless we name and personally serve a copy of a rule on every person subject to it. We also make all documents available to the public by posting them in the Department of Transportation's electronic docket at <http://dms.dot.gov>.

- (1) An advance notice of proposed rulemaking (ANPRM).
- (2) A notice of proposed rulemaking (NPRM).
- (3) A supplemental notice of proposed rulemaking (SNPRM).
- (4) A final rule.
- (5) A final rule with request for comments.
- (6) A direct final rule.

- (b) Each of the rulemaking documents in paragraph (a) of this section generally contains the following information:
- (1) The topic involved in the rulemaking document.
 - (2) FAA's legal authority for issuing the rulemaking document.
 - (3) How interested persons may participate in the rulemaking proceeding (for example, by filing written comments or making oral presentations at a public meeting).
 - (4) Whom to call if you have questions about the rulemaking document.
 - (5) The date, time, and place of any public meetings FAA will hold to discuss the rulemaking document.
 - (6) The docket number and regulation identifier number (RIN) for the rulemaking proceeding.

§ 11.27 Are there other ways FAA collects specific rulemaking recommendations before we issue an NPRM?

Yes, the FAA obtains advice and recommendations from rulemaking advisory committees. One of these committees is the Aviation Rulemaking Advisory Committee (ARAC), which is a formal standing committee comprised of representatives of aviation associations and industry, consumer groups, and interested individuals. In conducting its activities, ARAC complies with the Federal Advisory Committee Act and the direction of FAA. We task ARAC with providing us with recommended rulemaking actions dealing with specific areas and problems. If we accept an ARAC recommendation to change an FAA rule, we ordinarily publish an NPRM using the procedures in this part. The FAA may establish other rulemaking advisory committees as needed to focus on specific issues for a limited period of time.

§ 11.29 May FAA change its regulations without first issuing an ANPRM or NPRM?

The FAA normally adds or changes a regulation by issuing a final rule after an NPRM. However, FAA may adopt, amend, or repeal regulations without first issuing an ANPRM or NPRM in the following situations:

(a) We may issue a final rule without first requesting public comment if, for good cause, we find that an NPRM is impracticable, unnecessary, or contrary to the public interest. We place that finding and a brief statement of the reasons for it in the final rule. For example, we may issue a final rule in response to a safety emergency.

(b) If an NPRM would be unnecessary because we do not expect to receive adverse comment, we may issue a direct final rule.

§ 11.31 How does FAA process direct final rules?

(a) A direct final rule will take effect on a specified date unless FAA receives an adverse comment or notice of intent to file an adverse comment within the comment period--generally 60 days after the direct final rule is published in the Federal Register. An adverse comment explains why a rule would be inappropriate, or would be ineffective or unacceptable without a change. It may challenge the rule's underlying premise or approach. Under the direct final rule process, we do not consider the following types of comments to be adverse:

(1) A comment recommending another rule change, in addition to the change in the direct final rule at issue. We consider the comment adverse, however, if the commenter states why the direct final rule would be ineffective without the change.

(2) A frivolous or insubstantial comment.

(b) If FAA has not received an adverse comment or notice of intent to file an adverse comment, we will publish a confirmation document in the Federal Register, generally within 15 days after the comment period closes. The confirmation document tells the public the effective date of the rule.

(c) If we receive an adverse comment or notice of intent to file an adverse comment, we will advise the public by publishing a document in the Federal Register before the effective date of the direct final rule. This document may withdraw the direct final rule in whole or in part. If we withdraw a direct final rule because of an adverse comment, we may incorporate the commenter's recommendation into another direct final rule or may publish a notice of proposed rulemaking.

§ 11.33 How can I track FAA's rulemaking activities?

The best ways to track FAA's rulemaking activities are with the docket number or the regulation identifier number.

(a) Docket number. We assign a docket number to each rulemaking proceeding. Each rulemaking document FAA issues in a particular rulemaking proceeding, as well as public comments on the proceeding, will display the same docket number. This number allows you to search DOT's Docket Management System (DMS) for information on most rulemaking proceedings. You can view and copy docket materials during regular business hours at the U.S. Department of Transportation, Plaza Level 401, 400 7th Street, SW, Washington, DC 20590-0001. Or you can view and download docketed materials through the Internet at <http://dms.dot.gov>. If you can't find the material in the electronic docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the document you are interested in.

(b) Regulation identifier number. DOT publishes a semiannual agenda of all current and projected DOT rulemakings, reviews of existing regulations, and completed actions. This semiannual agenda appears in the Unified Agenda of Federal Regulations, published in the Federal Register in April and October of each year. The semiannual agenda tells the public about DOT's--including FAA's--regulatory activities. DOT assigns a regulation identifier number (RIN) to each individual rulemaking proceeding in the semiannual agenda. This number appears on all rulemaking documents published in the Federal Register and makes it easy for you to track those rulemaking proceedings in both the Federal Register and the semiannual regulatory agenda.

§ 11.35 Does FAA include sensitive security information and proprietary information in the Docket Management System (DMS)?

(a) Sensitive security information. You should not submit sensitive security information to the rulemaking docket, unless you are invited to do so in our request for comments. If we ask for this information, we will tell you in the specific document how to submit this information, and we will provide a separate non-public docket for it. For all proposed rule changes involving civil aviation security, we review comments as we receive them, before they are placed in the docket. If we find that a comment contains sensitive security information, we remove that information before placing the comment in the general docket.

(b) Proprietary information. When we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any

other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

§ 11.37 Where can I find information about an Airworthiness Directive, an airspace designation, or a petition handled in a region?

The FAA includes most documents concerning Airworthiness Directives, airspace designations, or petitions handled in a region in the electronic docket. If the information isn't in the docket, contact the person listed under FOR FURTHER INFORMATION CONTACT in the Federal Register document about the action.

§ 11.38 What public comment procedures does the FAA follow for Special Conditions?

Even though the Administrative Procedure Act does not require notice and comment for rules of particular applicability, FAA does publish proposed special conditions for comment. In the following circumstances we may not invite comment before we issue a special condition. If we don't, we will invite comment when we publish the final special condition.

(a) The FAA considers prior notice to be impracticable if issuing a design approval would significantly delay delivery of the affected aircraft. We consider such a delay to be contrary to the public interest.

(b) The FAA considers prior notice to be unnecessary if we have provided previous opportunities to comment on substantially identical proposed special conditions, and we are satisfied that new comments are unlikely.

§ 11.39 How may I participate in FAA's rulemaking process?

You may participate in FAA's rulemaking process by doing any of the following:

(a) File written comments on any rulemaking document that asks for comments, including an ANPRM, NPRM, SNPRM, a final rule with request for comments, or a direct final rule. Follow the directions for commenting found in each rulemaking document.

(b) Ask that we hold a public meeting on any rulemaking, and participate in any public meeting that we hold.

(c) File a petition for rulemaking that asks us to adopt, amend, or repeal a regulation.

§ 11.40 Can I get more information about a rulemaking?

You can contact the person listed under FOR FURTHER INFORMATION CONTACT in the preamble of a rule. That person can explain the meaning and intent of a proposed rule, the technical aspects of a document, the terminology in a document, and can tell you our published schedule for the rulemaking process. We cannot give you information that is not already available to other members of the public. The Department of Transportation's policy on oral communications with the public during rulemaking appears in Appendix I of this part.

Written Comments

§ 11.41 Who may file comments?

Anyone may file written comments about proposals and final rules that request public comments.

§ 11.43 What information must I put in my written comments?

(a) Your written comments must be in English and must contain the following:

(1) The docket number of the rulemaking document you are commenting on, clearly set out at the beginning of your comments.

(2) Your name and mailing address, and, if you wish, other contact information, such as a fax number, telephone number, or e-mail address.

(3) Your information, views, or arguments, following the instructions for participation in the rulemaking document on which you are commenting.

(b) You should also include all material relevant to any statement of fact or argument in your comments, to the extent that the material is available to you and reasonable for you to submit. Include a copy of the title page of the document. Whether or not you submit a copy of the material to which you refer, you should indicate specific places in the material that support your position.

§ 11.45 Where and when do I file my comments?

(a) Send your comments to the location specified in the rulemaking document on which you are commenting. If you are asked to send your comments to the Docket Management System, you may send them in either of the following ways:

(1) By mail to: U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Plaza Level 401, Washington, DC 20591.

(2) Through the Internet to <http://dms.dot.gov/>.

(3) In any other manner designated by FAA.

(b) Make sure that your comments reach us by the deadline set out in the rulemaking document on which you are commenting. We will consider late-filed comments to the extent possible only if they do not significantly delay the rulemaking process.

(c) We may reject your paper or electronic comments if they are frivolous, abusive, or repetitious. We may reject comments you file electronically if you do not follow the electronic filing instructions at the Docket Management System web site.

§ 11.47 May I ask for more time to file my comments?

Yes, if FAA grants your request for more time to file comments, we grant all persons the same amount of time. We will notify the public of the extension by a document in the Federal Register. If FAA denies your request, we will notify you of the denial. To ask for more time, you must file a written or electronic request for extension at least 10 days before the end of the comment period. Your letter or message must--

- (a) Show the docket number of the rule at the top of the first page;
- (b) State, at the beginning, that you are requesting an extension of the comment period;
- (c) Show that you have good cause for the extension and that an extension is in the public interest;
- (d) Be sent to the address specified for comments in the rulemaking document on which you are commenting.

Public Meetings and Other Proceedings

§ 11.51 May I request that FAA hold a public meeting on a rulemaking action?

Yes, you may request that we hold a public meeting. FAA holds a public meeting when we need more than written comments to make a fully informed decision. Submit your written request to the address specified in the rulemaking document on which you are commenting. Specify at the top of your letter or message that you are requesting that the agency hold a public meeting. Submit your request no later than 30 days after our

rulemaking notice. If we find good cause for a meeting, we will notify you and publish a notice of the meeting in the Federal Register.

§ 11.53 What takes place at a public meeting?

A public meeting is a non-adversarial, fact-finding proceeding conducted by an FAA representative. Public meetings are announced in the Federal Register. We invite interested persons to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting.

Petitions for Rulemaking and for Exemption

§ 11.61 May I ask FAA to adopt, amend, or repeal a regulation, or grant relief from the requirements of a current regulation?

(a) Using a petition for rulemaking, you may ask FAA to add a new regulation to title 14 of the Code of Federal Regulations (14 CFR) or ask FAA to amend or repeal a current regulation in 14 CFR.

(b) Using a petition for exemption, you may ask FAA to grant you relief from current regulations in 14 CFR.

§ 11.63 How and to whom do I submit my petition for rulemaking or petition for exemption?

(a) For paper submissions, send the original signed copy of your petition for rulemaking or exemption to this address: U.S. Department of Transportation, Docket Management System, 400 7th Street, SW., Room PL 401, Washington, DC 20591-0001.

(b) For electronic submissions, submit your petition to FAA through the Internet using the Docket Management System web site at this Internet address:
<http://dms.dot.gov/>.

(c) In the future, FAA may designate other means by which you can submit petitions.

(d) Submit your petition for exemption 120 days before you need the exemption to take effect.

§ 11.71 What information must I include in my petition for rulemaking?

(a) You must include the following information in your petition for rulemaking:

(1) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address.

(2) An explanation of your proposed action and its purpose.

(3) The language you propose for a new or amended rule, or the language you would remove from a current rule.

(4) An explanation of why your proposed action would be in the public interest.

(5) Information and arguments that support your proposed action, including relevant technical and scientific data available to you.

(6) Any specific facts or circumstances that support or demonstrate the need for the action you propose.

(b) In the process of considering your petition, we may ask that you provide information or data available to you about the following:

(1) The costs and benefits of your proposed action to society in general, and identifiable groups within society in particular.

(2) The regulatory burden of your proposed action on small businesses, small organizations, small governmental jurisdictions, and Indian tribes.

(3) The recordkeeping and reporting burdens of your proposed action and whom the burdens would affect.

(4) The effect of your proposed action on the quality of the natural and social environments.

§ 11.73 How does FAA process petitions for rulemaking?

After we have determined the disposition of your petition, we will contact you in writing about our decision. The FAA may respond to your petition for rulemaking in one of the following ways:

(a) If we determine that your petition justifies our taking the action you suggest, we may issue an NPRM or ANPRM. We will do so no later than 6 months after the date we receive your petition. In making our decision, we consider:

- (1) The immediacy of the safety or security concerns you raise;
- (2) The priority of other issues the FAA must deal with; and
- (3) The resources we have available to address these issues.

(b) If we have issued an ANPRM or NPRM on the subject matter of your petition, we will consider your arguments for a rule change as a comment in connection with the rulemaking proceeding. We will not treat your petition as a separate action.

(c) If we have begun a rulemaking project in the subject area of your petition, we will consider your comments and arguments for a rule change as part of that project. We will not treat your petition as a separate action.

(d) If we have tasked ARAC to study the general subject area of your petition, we will ask ARAC to review and evaluate your proposed action. We will not treat your petition as a separate action.

(e) If we determine that the issues you identify in your petition may have merit, but do not address an immediate safety concern or cannot be addressed because of other priorities and resource constraints, we may dismiss your petition. Your comments and arguments for a rule change will be placed in a database, which we will examine when we consider future rulemaking.

§ 11.75 Does FAA invite public comment on petitions for rulemaking?

Generally, FAA does not invite public comment on petitions for rulemaking.

§ 11.77 Is there any additional information I must include in my petition for designating airspace?

In petitions asking FAA to establish, amend, or repeal a designation of airspace, including special use airspace, you must include all the information specified by § 11.71 and also:

(a) The location and a description of the airspace you want assigned or designated;

(b) A complete description of the activity or use to be made of that airspace, including a detailed description of the type, volume, duration, time, and place of the operations to be conducted in the area;

(c) A description of the air navigation, air traffic control, surveillance, and communication facilities available and to be provided if we grant the designation; and

(d) The name and location of the agency, office, facility, or person who would have authority to permit the use of the airspace when it was not in use for the purpose to which you want it assigned.

§ 11.81 What information must I include in my petition for an exemption?

You must include the following information in your petition for an exemption and submit it to FAA as soon as you know you need an exemption.

(a) Your name and mailing address and, if you wish, other contact information such as a fax number, telephone number, or e-mail address;

(b) The specific section or sections of 14 CFR from which you seek an exemption;

(c) The extent of relief you seek, and the reason you seek the relief;

(d) The reasons why granting your request would be in the public interest; that is, how it would benefit the public as a whole;

(e) The reasons why granting the exemption would not adversely affect safety, or how the exemption would provide a level of safety at least equal to that provided by the rule from which you seek the exemption;

(f) A summary we can publish in the Federal Register, stating:

(1) The rule from which you seek the exemption; and

(2) A brief description of the nature of the exemption you seek;

(g) Any additional information, views or arguments available to support your request; and

(h) If you want to exercise the privileges of your exemption outside the United States, the reason why you need to do so.

§ 11.83 How can I operate under an exemption outside the United States?

If you want to be able to operate under your exemption outside the United States, you must request this when you petition for relief and give us the reason for this use. If you do not provide your reason or we determine that it does not justify this relief, we will limit your exemption to use within the United States. Before we extend your exemption for use outside the United States, we will verify that the exemption would be in compliance with the Standards of the International Civil Aviation Organization (ICAO). If it would not, but we still believe it would be in the public interest to allow you to do so, we will file a difference with ICAO. However, a foreign country still may not allow you to operate in that country without meeting the ICAO standard.

§ 11.85 Does FAA invite public comment on petitions for exemption?

Yes, FAA publishes information about petitions for exemption in the Federal Register. The information includes--

- (a) The docket number of the petition;
- (b) The citation to the rule or rules from which the petitioner requested relief;
- (c) The name of the petitioner;
- (d) The petitioner's summary of the action requested and the reasons for requesting it; and
- (e) A request for comments to assist FAA in evaluating the petition.

§ 11.87 Are there circumstances in which FAA may decide not to publish a summary of my petition for exemption?

The FAA may not publish a summary of your petition for exemption and request comments if you present or we find good cause why we should not delay action on your petition. The factors we consider in deciding not to request comment include:

- (a) Whether granting your petition would set a precedent.
- (b) Whether the relief requested is identical to exemptions granted previously.
- (c) Whether our delaying action on your petition would affect you adversely.
- (d) Whether you filed your petition in a timely manner.

§ 11.89 How much time do I have to submit comments to FAA on a petition for exemption?

The FAA states the specific time allowed for comments in the Federal Register notice about the petition. We usually allow 20 days to comment on a petition for exemption.

§ 11.91 How does FAA inform me of its decision on my petition for exemption?

- (a) The FAA will notify you in writing about its decision on your petition.
- (b) The FAA publishes a summary in the Federal Register that includes--
 - (1) The docket number of your petition;
 - (2) Your name;
 - (3) The citation to the rules from which you requested relief;
 - (4) A brief description of the general nature of the relief requested;
 - (5) Whether FAA granted or denied the request;
 - (6) The date of FAA's decision; and

- (7) An exemption number.

§ 11.101 May I ask FAA to reconsider my petition for rulemaking or petition for exemption if it is denied?

Yes, you may petition FAA to reconsider your petition denial. You must submit your request to the address to which you sent your original petition, and FAA must receive it within 60 days after we issued the denial. For us to accept your petition, show the following:

- (a) That you have a significant additional fact and why you did not present it in your original petition;
- (b) That we made an important factual error in our denial of your original petition; or
- (c) That we did not correctly interpret a law, regulation, or precedent.

Subpart B--Paperwork Reduction Act Control Numbers

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

- (a) The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) requires FAA to get approval from OMB for our information collection activities, and to list a record of those approvals in the Federal Register. This subpart lists the control numbers OMB assigned to FAA's information collection activities.

(b) The table listing OMB control numbers assigned to FAA collection

activities follows:

14 CFR part or section identified and described	Current OMB control number
Part 14	2120-0539
Part 17	2120-0632
Part 21	2120-0018, 2120-0552
Part 34	2120-0508
Part 39	2120-0056
Part 43	2120-0020
Part 45	2120-0508
Part 47	2120-0024, 2120-0042
Part 49	2120-0043
Part 61	2120-0021, 2120-0034, 2120-0543, 2120-0571
Part 63	2120-0007
Part 65	2120-0022, 2120-0535, 2120-0571, 2120-0648
Part 67	2120-0034, 2120-0543
Part 77	2120-0001
Part 91	2120-0005, 2120-0026, 2120-0027, 2120-0573, 2120-0606, 2120-0620, 2120-0631, 2120-0651
Part 93	2120-0524, 2120-0606, 2120-0639
Part 101	2120-0027
Part 105	2120-0027, 2120-0641
Part 107	2120-0075, 2120-0554, 2120-0628
Part 108	2120-0098, 2120-0554, 2120-0577, 2120-0628, 2120-0642
Part 109	2120-0505
Part 119	2120-0593

14 CFR part or section identified and described	Current OMB control number
Part 121	2120-0008, 2120-0028, 2120-0535, 2120-0571, 2120-0600, 2120-0606, 2120-0614, 2120-0616, 2120-0631, 2120-0651, 2120-0653
Part 125	2120-0028, 2120-0085, 2120-0616, 2120-0651
Part 129	2120-0028, 2120-0536, 2120-0616, 2120-0638
Part 133	2120-0044
Part 135	2120-0003, 2120-0028, 2120-0039, 2120-0535, 2120-0571, 2120-0600, 2120-0606, 2120-0614, 2120-0616, 2120-0620, 2120-0631, 2120-0653
Part 137	2120-0049
Part 139	2120-0045, 2120-0063
Part 141	2120-0009
Part 142	2120-0570
Part 145	2120-0003, 2120-0010, 2120-0571
Part 147	2120-0040
Part 150	2120-0517
Part 157	2120-0036
Part 158	2120-0557
Part 161	2120-0563
Part 171	2120-0014
Part 183	2120-0033, 2120-0604
Part 193	2120-0646
Part 198	2120-0514
Part 400	2120-0643, 2120-0644, 0649
Part 401	2120-0608
Part 440	2120-0601
SFAR 36	2120-0507
SFAR 64	2120-0573

14 CFR part or section identified and described	Current OMB control number
SFAR 71	2120-0620

Appendix 1 to Part 11--

Oral Communications With the Public During Rulemaking

1. What is an ex parte contact?

"Ex parte" is a Latin term that means "one sided," and indicates that not all parties to an issue were present when it was discussed. An ex parte contact involving rulemaking is any communication between FAA and someone outside the government regarding a specific rulemaking proceeding, before that proceeding closes. A rulemaking proceeding does not close until we publish the final rule or withdraw the NPRM. Because an ex parte contact excludes other interested persons, including the rest of the public, from the communication, it may give an unfair advantage to one party, or appear to do so.

2. Are written comments to the docket ex parte contacts?

Written comments submitted to the docket are not ex parte contacts because they are available for inspection by all members of the public.

3. What is DOT policy on ex parte contacts?

It is DOT policy provide for open development of rules and to encourage full public participation in rulemaking actions. In addition to providing opportunity to respond in writing to an NPRM and to appear and be heard at a hearing, DOT policy encourages agencies to contact the public directly when we need factual information to resolve questions of substance. It also encourages DOT agencies to be receptive to appropriate contacts from persons affected by or interested in a proposed action. But under some circumstances an ex parte contact could affect the basic openness and fairness of the rulemaking process. Even the appearance of impropriety can affect public

confidence in the process. For this reason, DOT policy sets careful guidelines for these contacts. The kind of ex parte contacts permitted and the procedures we follow depend on when the contact occurs in the rulemaking process.

3. What kinds of ex parte contacts does DOT policy permit before we issue an ANPRM, NPRM, Supplemental NPRM, or immediately adopted final rule?

The DOT policy authorizes ex parte contacts that we need to obtain technical and economic information. We need this information to decide whether to issue a regulation and what it should say. Each contact that influences our development of the regulation is noted in the preamble. For multiple contacts that are similar, we may provide only a general discussion. For contacts not discussed in the preamble, we place a report discussing each contact or group of related contacts in the rulemaking docket when it is opened.

5. Does DOT policy permit ex parte contacts during the comment period?

No, during the comment period, the public docket is available for written comments from any member of the public. These comments can be examined and responded to by any interested person. Because this public forum is available, DOT policy discourages ex parte contacts during the comment period. They are not necessary to collect the information the agency needs to make its decision.

6. What if the FAA believes it needs to meet with members of the public to discuss the proposal?

If the FAA determines that it would be helpful to invite members of the public to make oral presentations to it regarding the proposal, we will announce a public meeting in the Federal Register.

7. Are any oral contacts concerning the proposal permitted during the comment period?

If you contact the agency with questions regarding the proposal during the comment period, we can only provide you with information that has already been made available to the general public. If you contact the agency to discuss the proposal, you will be told that the proper avenue of communication during the comment period is a written communication to the docket.

8. If a substantive ex parte contact does occur during the comment period, what does FAA do?

While FAA tries to ensure that FAA personnel and the public are aware of DOT policy, substantive ex parte contacts do occasionally occur, for example, at meetings not intended for that purpose. In such a case, we place a summary of the contact and a copy of any materials provided at the meeting in the rulemaking docket. We encourage participants in such a meeting to file written comments in the docket.

9. Does DOT policy permit ex parte contacts the comment period has closed?

DOT policy strongly discourages ex parte contacts initiated by commenters to discuss their position on the proposal once the comment period has closed. Such a contact at this time would be improper, since other interested persons would not have an opportunity to respond. If we need further information regarding a comment in the docket, we may request this from a commenter. A record of this contact and the information provided is placed in the docket. If we need to make other contacts to update factual information, such as economic data, we will disclose this information in the final rule docket or in the economic studies accompanying it, which are available in the docket.

10. What if FAA needs to meet with interested persons to discuss the proposal after the comment period has closed?

If FAA determines that it would be helpful to meet with a person or group after the close of the comment period to group to discuss a course of action to be taken, we will announce the meeting in the Federal Register. We will also consider reopening the comment period. If an inappropriate ex parte contact does occur after the comment period closes, a summary of the contact and a copy of any material distributed during meeting will be placed in the docket if it could be seen as influencing the rulemaking process.

11. Under what circumstances will FAA reopen the comment period?

If we receive an ex parte communication after the comment period has closed that could substantially influence the rulemaking, we may reopen the comment period. DOT policy requires the agency to carefully consider whether the substance of the contact will give the commenter an unfair advantage, since the rest of the public may not see the record of the contact in the docket. When the substance of a proposed rule is significantly changed as a result of such an oral communication, DOT policy and practice requires that the comment period be reopened by issuing a supplemental NPRM in which the reasons for the change are discussed.

12. What if I have important information for FAA and the comment period is closed?

You may always provide FAA with written information after the close of the comment period and it will be considered if time permits. Because contacts after the close of the comment may not be seen by other interested persons, if they substantially

and specifically influence the FAA's decision, we may need to reopen the comment period.

Issued in Washington, DC, on August 8, 2000.

/S/

Jane F. Garvey,

Administrator.